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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of:	Majid SYED	Confirmation No.:	7289
Serial No.:	10/032,951	Art Unit:	2153
Filed:	October 26, 2001	Examiner:	Sean M. Reilly
For:	System and Method for Providing a Push of Background Data	Attorney Docket No.:	708034-605003

PRE-APPEAL-BRIEF REQUEST FOR REVIEW

Sir:

Claims 1-50 stand finally rejected. Claims 1-3, 5-17, and 19-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of USP 5,978,381 ("Perlman"), US Appln. Pub. No. 2002/0198963 ("Wu"), and U.S. Appln. Pub. No. 2002/0095228 ("Corts"). Claims 4 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Perlman and Wu and in view of USP 6,266,774 ("Sampath"). The rejections fail to establish *prima facie* cases obviousness and are based upon clear errors of fact and law.

The present application involves, *inter alia*, methods and systems for the communication of first and second data content via digital radio broadcast such that data content is enabled or activated for use at a digital radio broadcast receiver during a scheduled time period.

I. The rejections of the independent claims do not make out a *prima facie* case of obviousness since one skilled in the art would not have modified the Internet downloading methods of Perlman and Wu to utilize digital radio broadcasting of Corts

One of ordinary skill in the art would not have been motivated to modify the Internet downloading methods disclosed in Perlman and Wu to utilize radio broadcasting as disclosed in Corts. Perlman is directed to networked computer systems for communicating over the Internet wherein high bandwidth network content is downloaded on low bandwidth communications channels during off peak hours (see, e.g., col. 1, lines 5-52; col. 2, lines 7-25; col. 3, lines 1-6; col. 5, lines 21-27; and Figs. 1B and 2B). Perlman addresses the problem of limited bandwidth in the conventional communications infrastructure and the high cost of upgrading that infrastructure (see, e.g., col. 1, line 66 – col. 2, line 4). A user obtains content from a content server 210 (see Fig. 2B of Perlman) by connecting to the Internet or online service via a computer device (col. 3, lines 1-6; col. 5, lines 39-52) and by clicking on a link to download content of interest (col. 5, lines 53-67). Perlman notes that, when carried out during peak usage hours, downloads can be very slow (col. 6, lines 1-24). Perlman observes that the Internet infrastructure is largely idle during off-peak hours, namely, late-night hours and early morning hours (col. 6, lines 25-31). Thus, Perlman discloses an approach whereby *client software on a client device 202* causes the client device 202 to automatically dial into a server (POP) 132 to download content *that the user has specified to be of interest* (col. 7, lines 1-14). Fundamentally, Perlman's system is the conventional Internet with the provision of client

computer devices equipped to download high bandwidth content during off-peak hours, wherein *the client computer device initiates* the requests for information.

Perlman further discloses a modification involving multicast protocols to avoid individual download requests by a multitude of client devices 202, to minimize traffic that might otherwise overwhelm a server (col. 10, lines 5-47). Specifically, Perlman states:

> *At a pre-established time, all client devices 202 desiring to be updated connect to the Internet. Each client device connects to a server* at a pre-established IP address and *downloads information* as to what data feeds are available, when they are available, the nature of the data, and the multicast addresses where the data can be accessed. . . . . *[C]lient device 202 software makes a determination* of which data feeds are most relevant for the user and contain new data which has not previously been downloaded. Then, at the appointed times client device 202 begins to [] receive the appropriate data streams. (Col. 10, lines 48-63, emphasis added.)

Thus, even in the multicast embodiment relied upon by the Examiner, *software within the client device 202* connects to the Internet, actively seeks out information about data feeds, identifies what content is relevant to the user, and identifies what data feed source to receive content from, before ever receiving the data content.

Wu is directed to a method for use in an Internet browser to schedule downloads of documents from servers in a networked environment at a specified time, for a specified duration, and with a specified time interval (see, e.g., Abstract), and is relied upon by the Examiner for allegedly disclosing software for enabling *a user* to schedule times to render downloaded content (see, Office Action p. 3, and paragraphs 145-150 of Wu.)

Against this backdrop of Internet-based communications between servers and client computers, the Examiner asserts that "digital radio broadcasting was widely known and utilized for transfer of content in the art at the time of Applicant's invention, as evidenced by at least Corts," and that "it would have been obvious to one or ordinary skill in the art at the time of Applicant's invention to utilize radio broadcasting in Perlman's system, in order to further extend the number of devices that can receive Perlman's content and thus *increase the number of users that can use Perlman's system.*" (Office Action at p. 4, emphasis added.) In an attempt to bolster this broad assertion, the Examiner states that "in a similar broadcasting system, Corts disclosed broadcasting content such as news or advertisements through digital radio broadcasts" (citing paragraph 13 of Corts) and that "Corts further disclosed that using digital radio to broadcast content allows a vast array of devices to receive the content wirelessly such as handheld devices, cell phones, billboards and computers" (citing Corts paragraph 21). (Office Action at p. 4.) The Examiner's reasoning is flawed for at least several reasons.

A. The Rejection mischaracterizes Corts and uses flawed motivation to combine

The rejection mischaracterizes Corts. Corts does not disclose using digital radio broadcast to reach a "vast array" of devices; rather, Corts states, "The broadcaster's audience ('consumer') need not receive digital data through IBOC radio receivers exclusively, but will also be able to receive digital data from datacasters through other IBOC enabled devices such as

handheld information devices, cellular phones, billboards and computers which have IBOC chips sets." (Corts paragraph 21, IBOC refers to "in-band on-channel.") The overbroad characterization of Corts is apparently provided to suggest that IBOC enabled devices were ubiquitous and to imply that the digital radio receiving devices of Corts can provide the functionality of Perlman's client computers. The Examiner has presented no evidence for either of these contentions. Moreover, the computer-based Internet communication system utilized for Perlman's methods is not similar to the digital radio broadcasting system of Corts. Perlman's methods exploit off-peak times for downloading Internet content to client devices connected mainly to normal telephone and ISDN service lines (col. 1, lines 24-27), whereas the IBOC broadcasting disclosed in Corts permits radio broadcasters to transmit digital content over existing analog AM/FM radio frequencies to special digital-radio receivers (Corts paragraph 2.)

The Examiner also uses flawed motivation to combine references. The Examiner proposes "[utilizing] digital radio broadcasting in Perlman's system, in order to further extend the number of devices that can receive Perlman's content and thus increase the number of users that can use Perlman's system." The flaws implicit in this motivation are apparent. First, to be clear, "Perlman's system" is the conventional Internet and its supporting infrastructure, modified with *client computer software that permits client computers to download high bandwidth content during off-peak hours,* and "Perlman's content" is conventional Internet content of the type accessed via an Internet browser. In proposing a modification "to extend the number of devices that can receive Perlman's content" and "to extend the number of devices that can use Perlman's system," the Examiner implicitly requires that the digital radio broadcast receivers of the modified system should access the Internet (Perlman's system) and should receive Internet content (Perlman's content). In other words, the rejection necessarily requires the digital radio receiving devices of the modified system to act as web browsers, but the rejection includes no evidence or explanation to support such a complex contention. When viewed for what it is, the rejection is entirely vague and unsupported.

The Examiner's rejection also implicitly and erroneously requires (1) that the digital radio receiving devices of the modified system possess the functionality of Perlman's client computers, and (2) that Perlman's Internet infrastructure be modified to include a digital radio broadcast server that would communicate back and forth with such digital radio receiving devices. These requirements are implicit because the Examiner seeks to extend the functions of Perlman's client computers to digital radio broadcast "to increase the number of users of Perlman's system." These implicit requirements are also entirely unsupported in the rejection.

More particularly, the infrastructure of Corts is a radio broadcast infrastructure for IBOC digital radio broadcast of content to digital radio receivers. The infrastructure of Perlman is the Internet with supporting communications that permits client computers to communicate with servers. Although some of the receiving devices disclosed in Corts may be embedded in computers via IBOC enabled chip sets (the functions and extent of which are not disclosed in

Corts), this does not provide motivation for changing the Internet communications infrastructure and servers of Perlman to utilize digital radio broadcast. The Examiner is trying to advocate a sweeping change to the communication infrastructure and servers of Perlman apparently based on a brief statement in Corts that a computer can have an IBOC enabled chip set. The former simply does not follow from the latter. To the extent a computer may hypothetically have an IBOC enabled chip set, one of ordinary skill in the art might expect that it could receive digital radio broadcast in addition to carrying out its other functions. However, this observation in no way provides motivation for an Internet service provider to enter the business of digital radio broadcast, if that is what is being suggested.

B. There would be no expectation of success with the hypothetical modification

As noted above, in Perlman's system, *the client computer initiates* the requests for information, and even in the multicast embodiment of Perlman, *software within the client device 202* actively seeks out information about available data feeds, identifies what content is relevant, and identifies what data feed source to receive it from, before finally receiving the data content. Conspicuously absent from the Examiner's rejection is any discussion of how a hypothetical digital radio receiving device in the Perlman system would carry out these functions of Perlman's client computers. In fact, there is no support in the applied art for such a contention. Corts not only fails to provide an enabling disclosure of how to provide such functionality in digital radio receiving devices, but also *explicitly retreats* from any such description, stating:

> By interacting with the radio in some fashion, such as by pressing a button, or verbally issuing a command to a voice response system in the radio, the user can initiate an action in the receiver (or some other device as explained above) that sends a signal back to the gateway. *Such functionality in a receiver is not covered by this patent and is not in the domain of the invention*, but rather *a product of the developing receiver capabilities* brought about by receiver, auto, and automotive computer system manufacturers as well as wireless communication device manufacturers. (Corts paragraph 353, emphasis added.)

In suggesting a sweeping modification to the communications infrastructure of Perlman to include digital radio broadcasting, the Examiner implicitly and wrongly assumes that the digital radio receiving devices disclosed in Corts can do what Perlman's client computers can do. One of ordinary skill in the art considering the applied would not have believed that the digital radio receiving devices of Corts could carry out the functions of Perlman's client computers and would not have had expected success with the Examiner's modification.

For at least the reasons set forth above, one or ordinary skill in the art would not have been motivated to modify the system of Perlman as suggested by the Examiner, and the rejections against independent claims 1, 17, 32, and 46-50 should be withdrawn. The remaining claims are allowable at least by virtue of dependency.

II. Even if Perlman, Wu and Corts were hypothetically combined, the result would not yield the combination of features recited in the independent claims

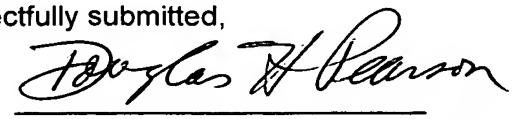
The Examiner has provided no description of how digital radio receiving devices in a modified Perlman system would carry out the functions of Perlman's client computers. Corts explicitly states that digital radio receivers with two-way communication functionality are outside the scope of Corts' disclosure. Thus, at most, the Examiner's hypothetical combination might yield the Internet approach of Perlman modified per Wu so that *computer users* schedule downloads and rendering of downloaded content. Applicants respectfully submit that nothing more can be said about the role of any digital radio receivers or digital radio broadcast servers in this hypothetical system since the rejection is too vague in this regard to be informative. For reasons set forth above, however, it is submitted that whatever such devices might entail, they would not possess the combinations of features recited in the present claims.

Moreover, claims 1, 17, 46, 47 and 49 do not place the control of the scheduled time period for activating or enabling use of the first and/or second content in the realm of *the client device,* but rather place this control at *the broadcast system side*. For example, claim 1, directed to a broadcasting system, recites that *the data content is enabled* for use during a scheduled time period after a recombination of said broadcasted first data type and second data type at said client devices. The client does not control this scheduling, since the claim explicitly recites that the data content is already enabled for used during the scheduled time period. This scheduling has already been set by the digital radio broadcast system by virtue of coding the data content itself, as described, for example, at paragraph 25 of the published application (e.g., sending an activation flag to the client device). Similarly, claim 17 recites "sending an activation message to said one or more client devices to activate use of recombined first and second data types during a scheduled time period." In contrast, the Office Action relies on Wu for disclosing *enabling a user to schedule a time* to automatically render downloaded content. (Office Action at p. 6, citing Wu paragraphs 145-150.) Thus, the hypothetical combination would not place the control of the scheduling function at the broadcast system side as required by claims 1 and 17. Accordingly, even if hypothetically combined, the combination of references would not render claims 1 and 17 obvious. A similar analysis applies to independent claims 46, 47 and 49.

III. Conclusion

In light of the above, it is respectfully requested that the rejections be withdrawn and that a Notice of Allowance be issued.

Respectfully submitted,

Date: March 21, 2007 By: 

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